IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11807 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SEJU PRAVINKUMAR ARAJANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11807 of 2004

MR MEHUL H RATHOD for Petitioner No. 1

MS MITA PANCHAL AGP for Respondent No. 1

MR MITUL K SHELAT for Respondent No. 2

RULE SERVED BY DS for Respondent No. 2, 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/01/2005

ORAL JUDGEMENT

1. The petitioner before this Court is a victim of an arbitrary action of a Committee which has not only ruined his career in service but has also ignored the

fact that for further studies the petitioner has mortgaged his property in order to pay up his tution fees. On account of the said arbitrariness, the survival of the petitioner is at stake. In this background, the matter was heard during vacation with the consent of the parties as a special case.

2. The petitioner herein has preferred this petition in order to quash and set aside the orders passed by the respondent authorities dated 10/08/2004 and 12/08/2004 cancelling the admission of the petitioner in B.Ed. Course at Annexure-G Coll. to the petition.

3. The facts of the case are that on 01/04/2004 respondent no.2 University had published an Advertisement for admissions to B.Ed. Course for the Academic Year commencing from June 2004. On 23/04/2004 the petitioner applied for the same as he was possessing the necessary qualifications. On 13/07/2004 the respondent University declared the list of selected candidates wherein the petitioner was covered in 10 % reserved quota of fresh candidates in SC category, at Annexure-B to the petition.

4. It is the case of the peititioner that on 11/05/2004, the respondent University issued Code Card to the petitioner after scrutiny and re-checking of the Form and on 20/05/2004 the petitioner requested the Committee of the respondent University for the correction of the mistakes in the Code Card issued to him. Subsequently, the petitioner received call letter dated 13/07/2004 from B.Ed. Admission Cell of the respondent University and he was informed to remain present for interview on 18/07/2004 with the relevant documents by call letter dated 13/07/2004, at Annexure-C to the petition.

5. Accordingly, on 18/07/2004 the petitioner remained present before the Committee of the respondent authorities and was selected for B.Ed. Course for the Academic Year 2004-2005. On 21/07/2004 the petitioner paid an amount of Rs.20,000.00 towards term fees etc. to respondent no.3 College and the College issued Receipt dated 22/07/2004 towards the payment of the said fees.

6. As studies for the said Course in the respondent College commenced on 26/07/2004, on 31/07/2004 the petitioner resigned from his service. By communication dated 10/08/2004, to the utter shock of the petitioner, he was informed by the respondent College that his admission to B.Ed. Course was cancelled. Feeling aggrieved by the said order, the petitioner issued Notice dated 12/08/2004 through his Advocate to respondents no.2

& 3 herein. By letter dated 12/08/2004, at Annexure-G to the petition, the petitioner was informed by respondent no.3 College that in pursuance of communication dated 10/08/2004 received from the respondent University, the admission of the petitioner has been cancelled as per the B.Ed. Admission Rules. Hence, this petition.

7. Mr.M H Rathod learned advocate for the petitioner has submitted that the impugned orders passed by the respondent authorities are violative of the principles of natural justice inasmuch as they have been passed without hearing and without issuing any notice to the petitioner. He has contented that the petitioner was having the necessary qualifications as required in the Advertisement published by the respondent University for admission to the said Course and was accordingly granted admission for the said Course after conducting interview and after verifying the necessary documents.

8. Mr.Rathod has further contended that the admission of the petitioner would be governed by Rule 2(A) read with Rule 6 of the B.Ed. Admission Rules. He has submitted that Rule 2(A) of the B.Ed. Admission Rules provided that a candidate who has passed M.A. with Economics is eligible to get admission in Economics or Sociology as per the availability of seats. He has submitted that Rule 4 is applicable to candidates who have secured admission in the General Category and not in the Reserved Category. Therefore, the petitioner was entitled for admission to B.Ed. Course as he belonged to the Reserved Category and had opted the subject of Sociology.

9. Mr.Rathod for the petitioner has further contended that on receipt of the first communication dated 11/05/2004, the petitioner had pointed out to the respondent authority the mistakes in the Code Card that was issued to the petitioner vide his letter dated 20/05/2004. In spite of the above letter, the respondent authorities had granted admission to the petitioner in the said Course, and therefore, it is now not open for the respondents to punish the petitioner for their own mistakes. He has further contended that the petitioner was forcefully thrown out of the respondent College and by threatening him, his signatures were obtained on certain blank vouchers and documents. As per the advise of his Advocate, the petitioner had applied to the Committee of the respondent University for getting the copies of the documents, but the same were not supplied to the petitioner.

10.1 Mr.Rathod for the petitioner has relied upon a decision of the Apex Court in the case of Rajendra Prasad Mathur v. Karnataka University & anr. reported in A.I.R. 1986 S.C., pg.1448 more particularly on Para 8 of the said decision. It reads as under;

> "8. .... The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges....."

10.2 Mr.Rathod for the petitioner has next relied upon a decision of the Apex Court in the case of Ashok Chand Singhvi v. University of Jodhpur & ors. reported in A.I.R. 1989 S.C., pg.823 more particularly on Para 17 of the said decision. It reads as under;

> "17. It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention. It has been already noticed that both the Dean and the Vice-Chancellor considered the objections raised by the Officer-in-Charge. Admissions, and thereafter direction for admitting the appellant was made. When after considering all facts and circumstances and also the objections by the office to the Admission of a candidate, the Vice-Chancellor directs the admission of such a candidate, such admission could not be said to have been made through mistake. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. In this connection, we may refer to a decision of this Court in Rejendra Prasad Mathur v. Karnataka University, 1986 (Suppl) SCC 740 : (AIR 1986 SC 1448). In that case, the appellants were admitted to certain private engineering colleges for the B.Ed. Degree Course, although they were not eligible for admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At

the same time, this Court took the view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellant should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering."

10.3 Mr.Rathod for the petitioner has next relied upon a decision of the Apex Court in the case of Nitasha Paul v. Maharishi Dayanand University, Rohtak & ors. reported in (1996) 2 S.C.C., pg.103 more particularly on Para 19 of the said decision. It reads as under;

"19. ... But this situation has been brought about by the capricious mode of selection adopted by the Vice-Chancellor. Under these circumstances, we direct that the order of the trial Court should be restored and Nitasha Paul should be allowed to join the Dental College at Rohtak. An extra seat may be provided for this purpose, if found necessary."

10.4 Mr.Rathod for the petitioner has next relied upon a decision of this Court passed in Special Civil Application No.13293 of 2004 dated 22/12/2004 and more particularly on Para 5 of the said decision. It reads as under;

"5. In the premises aforesaid, the petition is allowed. The impugned order at Annexure-K is quashed and set aside. The impugned order was passed on 30th September 2004 and therefore the question of attendance will arise. Since the said order is quashed the respondent shall grant special leave for the said period to the petitioner as a special case for the purpose of granting the term. Rule is made absolute accordingly with no order as to costs. D.S. permitted."

11. Mr.Mitul K Shelat learned advocate appearing for respondent no.2 University has submitted that in respect of the 10 % seats reserved as an exception for fresh students, there is a specific Rule which provides that a student possessing the qualification of M.A. Economics will be considered only qua the 10 % seats available in the subject of Economics. He has submitted that the said Rule is applicable for both General and Reserved Category candidates and therefore it cannot be said that Rule 4 is only applicable to candidates belonging to the General Category and not to the Reserved Category. Therefore, under the Rules the petitioner was not eligible for admission to the said Course.

12. Mr.Shelat learned advocate for the respondent University has further contended that if the petitioner is granted admission for the said Course during the current Academic Year then other candidates belonging to the same category and having the necessary qualifications will also demand the same. Therefore, it would not be possible for the respondent University to grant admission to the petitioner during the current Academic Year.

13.1 Mr.Shelat learned advocate for the respondent University has relied upon a decision of the Apex Court in the case of The State of Punjab v. Jagdip Singh & ors. reported in A.I.R. 1964 S.C., pg.521 more particularly on the observations made in Para 8 of the said decision;

> "8. .... In our opinion where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status. No doubt, the Government has used the expression "de-confirming" in its notification which may be susceptible of the meaning that it purported to undo an act which was therefore valid. We must, however, interpret the expression in the light of actual facts which led up to the notification. Those facts clearly show that the so-called confirmation by the Financial Commissioner of Pepsu was no confirmation at all and was thus invalid. In view of this, the Notification of October 31, 1957 could be interpreted to mean that the Government did not accept the validity of the confirmation of the respondents and other persons

who were confirmed as Tahsildars by the Financial Commissioner, Pepsu."

13.2 The aforesaid decision is with respect to the reduction in ranks under Article 311(2) of the Constitution of India. In the present case, the statutory rules cannot be compared with the rules enunciated under Article 311 of the Constitution of India. Moreover, when the respondent authority had granted admission to the petitioner after three scrutinies and the petitioner had in fact communicated about the mistakes by his letter dated 20/05/2004, they cannot take advantage of their own wrong inasmuch as their mistake has resulted into miscarriage of justice. Hence, this decision can not come to the rescue of the respondent authorities.

13.3 Mr.Shelat for the respondent authorities has next relied upon a decision of the Apex Court in the case of State of M.P. & ors. v. Mahesh Kumar & ors. reported in A.I.R. 1997 S.C., pg.2710 more particularly on Para 8 of the said decision. It reads as under;

"8. Admittedly, this relaxation was only in relation to Jabalpur zone. In all other zones, no such relaxation had been given. Consequently, the question arises; whether the action taken by the DGP in granting relaxation to the Head Constables who appeared in the examinations held in Jabalpur zone is correct ? In view of the fact that no uniform rule applicable to all the Head Constables throughout the State has been issued obviously, realising the mistake committed by him, the DGP had withdrawn the relaxation granted earlier on Feb 9, 1994 by proceedings dated Dec 2, 1994. It is true that if any vested right is created in favour of a person, the same cannot be deprived of or denied without affording to him an opportunity of hearing on the principles of violation of audi alteram partem. In this case, the Head Constables, who had written the examination, but failed to secure 50% or 40%^in the general category and reserved category respectively, had no vested right for further grant of 15% and 10% grace marks respectively. The reason being that if the DGP grants for only one zone, they would scale a march over others who are similarly situated, namely, who failed in other zones in the examination, but were not given the same

> relaxation. In view of the above situation, the D.G.P. realising the mistake, has rightly withdrawn the relaxation and the 51 Head Constables belonging to general candidates and 15 Head Constables belonging to reserved category had no vested right in that behalf. The power to relax would include the power to withdraw on valid grounds. Thereby, the principle of natural justice was not violated. The Tribunal, therefore, was clearly in error in allowing the O.As. on the ground that it is violative of principles of natural justice."

13.4 The aforesaid decision will also not apply to the case on hand inasmuch as the benefit of regularization was given in a particular zone and not to other zones, and therefore, the Apex Court on the basis of Article 14 of the Constitution of India had cancelled the promotions. In the present case, the question is of admission and not of granting any benefit to a particular category of person/s. Here, admission was given to the petitioner on account of mistake on the part of the respondent University and the petitioner had himself tried to rectify the said mistake by his communication dated 20/05/2004.

13.5 Mr.Shelat for the respondent University has next relied upon a decision of the Apex Court in the case of M.C. Mehta v. Union of India & ors. reported in A.I.R. 1999 S.C., pg.2583, wherein it has been held that the Court can refuse to strike down the order, if such striking down results in restoration of another order passed earlier in favour of petitioner in violation of the principles of natural justice.

13.6 The aforesaid decision pertained to allotment of land where the person was not eligible for holding the said land. Hence, the said decision also can not come to the rescue of the respondent authorities.

13.7 Mr.Shelat for the respondent University has next relied upon a decision of the Apex Court in the case of Hemant L. Leuva v. H. S. Shah, Chairman, Admission Committee & Dean reported in 1997 (1) G.L.R., pg.853, wherein it has been held that in matters relating to the internal working of an educational institution and more particularly in matters of admissions the Court shall not interfere unless the act complained of is clearly beyond jurisdiction or contrary to the statutes, rules or regulations governing the institution, or there is a

statutory duty which the authority has failed to perform or the impugned act is mala fide or arbitrary.

13.8 The aforesaid decision pertained to admission in Post Graduate Medical Courses where under the Rules directions can not be issued to admit a student more particularly when the Rule enabling the authorities to reshuffle seats had been deleted and academic term had come to an end. The ratio laid down in the aforesaid decision will not apply to the case on hand as admission was given to the petitioner by the Committee of the respondent University after conducting inquiries at three different stages i.e. on 03/05/2004, 10/05/2004 and 21/07/2004.

14. From the documents placed on record, it is clear that admission was given to the petitioner by the Committee of the respondent University after inquiry at three different stages, i.e. on 03/05/2004 - when the application form was scrutinized, on 10/05/2004 - when the said application form was re-checked, on 18/07/2004 when the petitioner was interviewed and on 21/07/2004 when the petitioner paid the admission fees to respondent no.3 College. Moreover, the petitioner had even addressed a communication dated 20/05/2004 to the Committee for the correction of mistakes in the Code Card issued to the petitioner by the respondent University. Therefore, after conducting three scrutinies, the respondent authorities cannot take advantage of their own mistake inasmuch as the said mistakes has resulted into miscarriage of justice and has ruined the career of the petitioner.

15. Moreover, it is not the case of the respondents that on account of some mischief or fraud on the part of the petitioner, the Committee of the respondent University had committed the said mistake. From the documents placed on record, it clearly transpires that it is a clear case of mistake on the part of the respondent authorities inasmuch as the Forms were scrutinized first on 03/05/2004 and again on 10/05/2004. By letter dated 20/05/2004 the petitioner had even pointed out the mistakes that had appeared in the Code Card issued to the petitioner. In spite of the above, admission was granted to the petitioner after conducting interview on 18/07/2004 and on payment of Admission Fees of Rs.20,000.00 to the respondent College.

16. On 29/07/2004 the Committee of the respondent University had taken the decision to cancel the admission of the petitioner. The said decision was never

communicated to the petitioner, otherwise, the petitioner would not have resigned from his service on 31/07/2004 in order to take admission in the B.Ed. Course.

17. Apart from the above, the conduct of respondent no.3 College is required to be viewed seriously. Till date it is not borne out from the record that any action has been taken against respondent no.3 College, which is a self-financed institution, pursuant to allegations that the said institution had not returned the admission fees to the petitioner and that signatures of the petitioner was obtained on certain blank vouchers and documents. The above allegations have gone without any denial and no actions have been taken by the respondent authorities to counter such allegations.

18. The contention of Mr.Shelat that if at all the petitioner is granted admission to the said Course, then other eligible candidates belonging to the same Reserved Category would demand the same, is required to be rejected only on the ground that the petitioner had himself pointed out to the respondent University immediately on 20/05/2004 about the mistake in the Code Card issued by the Commmittee to the petitioner. In spite of the said communication, on 18/07/2004 the petitioner was granted admission. The decision of cancellation of the admission was taken ex-parte on 29/07/2004 before which date the petitioner had started attending the classes i.e. on 26/07/2004. In my opinion, before taking such a harsh decision, the respondent authority ought to have issued Notice to the petitioner. If notice would have been issued to the petitioner, then the petitioner would not have resigned from his service. Thus, it is clearly established that a mere violation of the principles of natural justice has ruined the career and property of the petitioner.

19. Looking to the facts and circumstances of the case, the respondent University ought to have considered the case of the petitioner sympathetically and ought to have granted admission by creating an additional seat, as directed by the Apex Court in Nitasha Paul v. Maharishi Dayanand University, Rohtak & ors. (supra) case.

20. At one stage, the petitioner had requested that the Committee Members should be permitted to be joined as parties so that some directions can be issued to them for compensating the loss caused to the petitioner on account of their negligence. However, Mr.Rathod learned advocate for the petitioner has preferred to argue the matter on merits since the petitioner is desirous of prosecuting

his studies during the current Academic Year. In above view of the matter, the order passed by the respondent authorities, cancelling the admission of the petitioner, is required to be quashed and set aside.

21.1 For the foregoing reasons, this petition is allowed. The orders passed by the respondent authorities dated 12/08/2004 and 10/08/2004, at Annexure-G Coll. to the petition, cancelling the admission of the petitioner in the B.Ed. Course, are quashed and set aside. The respondent authorities are directed to consider the case of the petitioner in the same manner in which this Court had issued direction in Special Civil Application No.13293 of 2004 dated 22/12/2004.

21.2 In case the respondent authorities are not in a position to consider the case of the petitioner for the current Academic Year, then they are directed to pay the regular salary of a Clerk for the current Academic Year to the petitioner in view of the fact that the petitioner had lost his job on account of the mistake of the respondent authorities.

21.3 The respondent authorities are directed to ensure that during the next Academic Year the petitioner gets admission in the said Course if in the current Academic Year they are not in a position to give him admission for the said Course. The fees already paid by the petitioner for the current Academic Year shall be adjusted against the fees that he may pay for the next Academic Year if he is not allowed to study in the current Academic Year.

21.4 The amount which is deposited by the petitioner in the Registry of this Court shall be refunded to the petitioner. The respondent authorities are directed to implement the aforesaid directions within a period of two weeks from the date of receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

22. Respondent no.3 College has not appeared before this Court. Now, in view of the fact that allegations of non-refund of fees and of obtaining signatures on blank documents have been levelled against it and the said allegations have not been denied by the respondent College in spite of service twice, the respondent University is directed to take appropriate action against the said College.

(K. S. Jhaveri, J.)

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